Schwan's Sales Enterprises, Inc. *and* Local 7, International Brotherhood Of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 7-CA-17596, 7-CA-17749, and 7-RC-15866

September 14, 1981

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On February 18, 1981, Administrative Law Judge Claude R. Wolfe issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Schwan's Sales Enterprises, Inc., Three Rivers, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge: This proceeding was heard before me at Centerville, Michigan, on November 12 and 13, 1980, pursuant to a consolidated complaint based on charges timely filed, and a Board order directing hearing on certain objections raised by the Union to the conduct of the election in Case 7-RC-15866. The complaint alleges conduct violative of Section 8(a)(1) of the Act consisting of interrogation, threat of discipline for wearing prounion hats and buttons, and the creation of an impression of surveillance of employee union activity. It also alleges Gregory McCully was discriminately discharged on March 21, 1980.

Upon the entire record, including my careful observations of the demeanor of the witnesses as they testified before me, and after due consideration of the post-hearing briefs filed by the parties, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Respondent is a Minnesota corporation with its principal office and place of business at Marshall, Minnesota, and other places of business in Illinois, Indiana, Ohio, Pennsylvania, and Michigan, including the facility at Three Rivers, Michigan, involved herein. It processes, sells, and distributes food products and related items. During the year ending December 31, 1979, a representative period, Respondent in the course and conduct of its business operations, purchased and caused to be transported and delivered to its Three Rivers place of business, food, beverages, and other goods and materials valued in excess of $500,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its place of business in Three Rivers, Michigan, directly from points located outside the State of Michigan. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts Found*

Sales Manager James Woodruff and Robert Vanness, Respondent's eastern division manager, agreed on March 18, 1980,[1] that a meeting of route drivers should be held on March 20 to reemphasize Respondent's policy against drinking while driving a company vehicle because this rule was being honored in the breach by at least one driver. Woodruff accordingly posted a notice of drivers' meeting on the bulletin board about 6:30 or 7 a.m. on March 19.[2]

About 3 or 4 p.m.[3] on March 19, mechanic Gregory McCully and employee Michael Meringa were in a restaurant discussing happenings at Respondent's facility when an otherwise unidentified man introduced himself as being from a union,[4] described benefits to be gained

[1] All dates herein are 1980.

[2] Robert Mitchell, an ex-employee currently being sued by Respondent for allegedly taking Respondent's customers with him to his new position, testified that the notice was not posted when he set out on his route "probably around" 8 a.m. on March 19 and first saw it that evening when he returned about 9 or 10 p.m. Mitchell's testimony was otherwise unsupported. He tended to generalize when testifying, and seemed to be trying to avoid direct and definitive answers. On the whole, Woodruff appeared the more candid witness and I credit him on the time of posting.

[3] This is the best estimate of employee Meringa, and no better evidence was proffered.

[4] I conclude from all the evidence it was the Teamsters Union.

from the Union, and gave them authorization cards. Both McCully and Meringa then and there signed cards. The "union man" gave McCully extra cards to give to the remaining employees. That evening McCully successfully solicited Robert Mitchell to sign a card when they met on the highway as Mitchell was driving home. I credit McCully that he also asked employee David Rahn to sign a card on March 19, but Rahn refused.[5] The following day, March 20, McCully successfully solicited employee Danner, at Danner's home, to sign one of the cards.

Woodruff conducted the March 20 meeting with the drivers wherein he warned them that the penalty for drinking at work was termination. Mitchell, conceding that he does not know exactly what was discussed at the meeting, agrees that the meeting was devoted to a discussion of things drivers could be fired for, but does not specify what these things were. Mitchell further asserts that in the course of the meeting someone, whose identity he does not recall, complained about a problem with truck repairs that were McCully's responsibility. He does not recall exactly what the problem was, but avers that "they," apparently Woodruff, said McCully was the highest paid mechanic in the division whose pay could no longer be justified and "things are gonna be taken care of." I credit Woodruff that McCully was not discussed at this meeting, and it was devoted solely to the drinking and driving problem. Woodruff does, however, believably testify that McCully's performance had been a topic of discussion at regular Monday morning sales meetings, and I am persuaded that Mitchell was, at best, possibly confused as to when these comments on McCully took place.

On the morning of March 21, a truck became mired in the mud at Respondent's lot. After Meringa was unsuccessful in extricating it, McCully tried to drive it out, with no success. At or about 5:30 a.m., McCully called "Pappy" Clark's wrecker service and received a promise the wrecker would be there by 8 a.m. McCully then finished up his other work and went home at 6:30 a.m. Shortly before 8 a.m., Woodruff was advised by driver Watson, with whom he was riding that day, that driver Danner would be unhappy because his truck was stuck. Woodruff asked what he was talking about, was told the truck was stuck in the mud, and then went to the facility. After viewing the truck, Woodruff called McCully. McCully's wife first answered. Then McCully got on the phone. It was then 8 a.m. or a few minutes after. The testimony of Woodruff and McCully, together with the pretrial affidavit of McCully and the testimony of employee Reese[6] who overheard their conversation in Woodruff's office, has been carefully considered, and I am persuaded that the following is a fair summation of their conversations that day derived from a composite of the credited portions of their testimony.

When McCully answered the phone, Woodruff asked who had parked the truck, and was told Meringa had done it. Woodruff then asked why he had not been called. McCully responded that Danner and the wrecker service had been notified and the wrecker service had promised to be there by 8 a.m. The wrecker had not in fact arrived. Woodruff directed McCully to secure alternative wrecker service on a 24-hour basis. Woodruff denies advising McCully he would be fired if he did not have such a service by the time he next came to work but, given the fact that the two were having a heated exchange, I believe it likely and find that he did so advise McCully, as McCully claims. McCully responded it was Woodruff's responsibility, not his, to secure wrecker service. Woodruff differed and repeated his order. McCully and Woodruff differ as to which hung up first, but this is of no consequence.

After the phone call, McCully went directly to Woodruff's office at the facility, arriving about 15 minutes later. McCully abruptly entered the office, told Woodruff he was not going to talk to McCully personally in the same way he had on the phone and that he did not like the way Woodruff had talked to his wife on the phone.[7] This McCully followed by calling Woodruff a "little son-of-a-bitch" and a "mother-fucker" and by inviting him outside to settle the matter.[8] Woodruff responded that he was not afraid and McCully was fired and should get out. McCully left.

Within a half hour of the office confrontation, Woodruff met McCully in the parking lot and told him to return that night, after both had cooled their anger, to talk the matter over.

Later that morning, about 11 o'clock, Woodruff called Vanness and related the events surrounding the mired trucks and his conversations with McCully and asked Vanness what he should do. Vanness confirmed that Woodruff had acted correctly, that Respondent could not keep anyone who reacted like McCully had, and advised Woodruff to type up what had happened and place it in McCully's personnel folder to memorialize the facts for unemployment claims. Woodruff did so.

McCully met with Woodruff about 7 or 8 p.m. that night. Woodruff told him he had discussed the matter with Vanness and it had been decided McCully's actions of the morning could not be tolerated because they did not want others to follow his example and that he was fired. I find the "example" referred to was his misconduct, not his union activity. McCully asked to see his personnel file,[9] and asked for copies of three documents headed "Need For Improvement" and dated February 1, March 17, and March 21, 1980, respectively. None of these documents had previously been shown to McCully. The March 21 document is the memo suggested by Vanness. The February 1 and March 17 documents make reference to incidents of unsatisfactory performance, and Woodruff credibly testified that he had discussed the

[5] I do not credit Rahn's denial that McCully solicited him.

[6] I do not credit Mitchell that Reese was not present during this conversation.

[7] There is no evidence Woodruff said anything improper to McCully's wife.

[8] McCully concedes, via adoption of his pretrial statement as a true account, that he called Woodruff a "sorry little bastard" and said he would like to take him outside. McCully mentioned neither of these two items on direct examination.

[9] I do not credit McCully's testimony that he asked why he was fired because it is plain that he knew and was told that his conduct that morning in Woodruff's office was the reason, nor do I credit his testimony that Woodruff told him he had six reasons for firing him.

matters noted in these two documents with McCully[10] but had prepared the documents as notes to the file.

Although not admitting that his work had ever been criticized, McCully concedes that from the time Woodruff came to the facility in January 1980 he was unhappy with Woodruff because Woodruff told employees what to do and when and how to do it, and McCully had protested Woodruff's conduct directly to Woodruff from the beginning of Woodruff's tenure as sales manager.

In any event, carbon copies of the three "Need For Improvement" documents were given to McCully. I find that Woodruff did not tell McCully they were reasons for his discharge and Respondent does not advance them as support for the discharge.

Meringa, a vague, disjointed, and unconvincing witness, testified that shortly after McCully was discharged, apparently within a day or two,[11] Woodruff told him that McCully was discharged for things he had done, and things he had not done, and then advised Meringa not to associate with McCully because it could hinder Meringa's employment with Schwan. According to Woodruff, he told Meringa that McCully had been fired and was not to be on the property. Woodruff denies telling Meringa not to associate with McCully. I credit Woodruff, a more impressive and believable witness than Meringa.

Meringa further testified to a conversation[12] wherein Vanness gave him the "riot act" because trucks were sometimes stuck and then told him that McCully was fired for two reasons. Vanness did not tell him what the two reasons were. According to Vanness, he talked to Meringa on March 25 about two different trucks getting stuck in the mud because Meringa had parked them where the ground was not packed down. Vanness avers this was the entire content of the conversation except for a question posed to Meringa as to whether McCully had been around picking up tools from the shop, to which Meringa answered in the negative. Vanness' version is credited. Apart from his superior demeanor, I do not think it probable that Vanness, for no apparent reason, would convey the message that McCully was fired for two reasons without giving some slight indication as to what they were.

Respondent received its first knowledge[13] of union activity via a March 28 telegram from the Union wherein it notified Respondent of its designated majority status, offered to submit to a card check, warned against discrimination, and requested recognition and bargaining. The original charge in Case 7-CA-17596 naming McCully as an alleged discriminatee and relating his union activity, was filed on March 31. The petition for election in Case 7-RC-15866 was filed the same day.

Respondent concedes that after it became aware of union activity by way of the union telegram it mounted a substantial campaign to discourage employees from affiliating with the Union.

Vanness and former employee Donald Vallenga give different versions of what transpired at a conversation between them on April 17. According to Vallenga, as he came in from his route, about 10 or 11 p.m., Vanness asked if he would talk with him. Vallenga agreed and asked if he would talk with him. Vallenga agreed and suggested they go to the Time Out bar inasmuch as visiting Retail Sales Manager Don Wichman had not eaten. Vallenga avers that they proceeded to the bar where a conversation ensued with driver John Brady present. The conversation commenced, according to Vallenga, with Vanness asking what problems had led to employees contacting the Union, at which point they started discussing commission cuts and insurance. Vallenga mentioned that he thought McCully had been discharged unjustly and deserved his job back. Vanness responded McCully could not get his job back, according to Vanness' lawyers. Vallenga differed with this. Vallenga states that Vanness told him other employees looked up to him and he could turn "this" around anytime he wanted to. Vallenga agreed he could, but would not. Whereupon, Vanness asked if he had brought the Union in. Vallenga said McCully had, but that Vallenga was also for the Union. Vanness responded, "I figured Greg was the one."

Vanness gives a different version, as follows: He and Wichman were discussing going to eat when Vallenga came in and suggested they go to the Time Out bar because there were sandwiches there and he wanted to talk with them. After some hesitation, Vanness agreed and they all met at the bar where John Brady was also present intermittently when not off playing pool. The conversation began with Vallenga protesting commission cuts and requesting an extra commission in view of his superior production.[14] Wichman offered to show Val-

[10] McCully was argumentative and evasive when asked if Woodruff ever criticized his work or brought job performance problems to his attention. As examples of the tenor of this testimony, see the following:

> Q: You're telling me at no time did Mr. Woodruff ever criticize your work or ask you to do better, do a better job, or there were problems with your performance?
>
> A: Mr. Woodruff was constantly putting pressure on everyone.
>
> Q: Okay, in this connection, you had a number of conversations—he had a number of conversations with you, in reference to what he thought you should do to improve your job performance; is that correct?
>
> A: My job performance, no.
>
> Q: Well, what were the conversations about?
>
> A: The conversations were giving me direct orders to do something, and do it a certain way, and when to have it done.

[11] Meringa's dates and times are confused.

[12] He first says "later," then amends it to, "I don't remember," when pressed for a date.

[13] I do not agree with the General Counsel's contention that knowledge of McCully's union activities on March 19 and 20 should be inferred on the basis of the "small plant doctrine." Although it later became common knowledge at the facility that McCully was an activist, the situation as it existed on March 21 gives no sound basis for inferring such knowledge. He and Meringa signed their cards at a restaurant about 3 or 4 p.m. on March 19. McCully solicited Mitchell on the highway as he was driving home the evening of March 19 and solicited Danner at Danner's home on March 20. The only union activity by McCully that was possibly at the facility was his solicitation of Rahn on the night of March 19, but it is not clear where Rahn was solicited. The mere fact the work force is small, here about 13 in the bargaining unit, does not require a conclusion of knowledge but it is a factor to support such an inference. In this case the activity, with the possible exception of the solicitation of Rahn, occurred away from the facility and there is simply no reason on the evidence before me to infer Respondent knowledge by 8 a.m. or within minutes thereafter on March 21 when McCully was discharged.

[14] Vallenga was Respondent's top salesman in the division.

lenga data reflecting more than a 13-percent increase in retail sales personnel's income and Vanness promised to have Wichman send the documents to show this increased income.[15] Vallenga opined that he would like to go to Marshall, Minnesota, to talk to Marvin Schwan, Respondent's president, about a pay increase or commission increase. Vanness advised Respondent was under the direction of legal counsel as to what they could or could not do, but he would check and let Vallenga know the result later.[16] Vallenga pointed out that if he could persuade Marvin Schwan to raise commissions the employees would vote against the Union and there would be no need for one. Vallenga also charged that Respondent was pocketing excess insurance premiums and charging employees too much. He also said he would like to see McCully reinstated. Vanness replied that McCully's termination was in litigation and nothing could be done about it at the time. Vanness denies initiating any talk about the Union, or asking Vallenga or Brady about their union activities or those of others. Vanness testified that there was no reason to interrogate anyone because it was common knowledge who was for and against the Union, and the pending unfair practice charge and the employee grapevine had made him aware of this as well as the fact McCully had started the Union. I do not agree with the General Counsel that Vanness' statement in regard to McCully requires a conclusion that Respondent knew of McCully's activities prior to his discharge. All it shows is that Respondent knew this as a result of the March 31 charge, which names McCully and generally sets forth his union activities, and employee conversation which came to his attention. I am not persuaded by this, or anything else in the record, that Respondent knew of any union activity until March 28. The evidence certainly does not preponderate in favor of General Counsel's inference of predischarge knowledge.

In evaluating the conflicting testimony of Vanness and Vallenga,[17] I have kept in mind that Vanness is alleged as a perpetrator of unlawful acts, and Vallenga was discharged subsequent to April 17 and was alleged in the May 6 charge in Case 7-CA-17749, but not proceeded on by the General Counsel. This does not, however, give me much help in determining credibility. Similarly, that Vanness' conduct *vis-a-vis* employees and the Union had been prescribed by counsel to avoid the sort of conversation alleged by Vallenga makes it somewhat unlikely that Vanness would made the statements alleged, but Vanness' meeting with Vallenga in a bar would seem to be in conflict with counsel's advise, from which one might infer that advice was not always followed. This is one of those instances where the record evidence at hand with respect to credibility is not dispositive and demeanor evidence is of utmost importance. Vanness appeared to be testifying with more certainty than Vallenga and Vanness' version impressed me as the more convincing when he delivered it. Comparing the testimonial demeanor of the two as I observed and noted it, I am persuaded that Vanness' version must be given credence over that of Vallenga.

On May 6, employee Jerry Robinson was wearing a cap with a Teamsters emblem and two Teamsters buttons on it. Woodruff asked Robinson to take the cap off. Robinson refused, whereupon Woodruff grabbed the cap only to have Robinson grab it back and put it on again. Woodruff concedes he asked, "What are you trying to do, get yourself fired?" Robinson left without responding. There were two other employees present. Robinson continued wearing the cap for several days thereafter. I credit Woodruff's uncontroverted testimony that he told Robinson, after consulting his lawyer about the incident, that he could wear the cap, but not on his route, and could wear a union button anywhere.

On the morning of May 7, John Brady and fellow employee Tinglish volunteered to Vanness that a poll taken by employees indicated that two people would vote for the Union. On the evening of the same day Brady expressed concern to Vanness about the discharge of Vallenga and said that he thought Vallenga should be reinstated. Vanness testified that he told Brady that under the circumstances with Vallenga there was nothing Respondent could do or wanted to do. Brady's version is that Vanness said if Vallenga would drop the charges against Respondent and sign a paper about his work attitude he would be reinstated, but if the Union came in it would be out of Vanness' hands.

It is possible that Brady is correct but the record persuades me to credit Vanness because the charge in Case 7-CA-17749 naming Vallenga was filed on May 6 but not served on Respondent until May 8. Moreover, it was not received by Respondent until May 9. It is improbable that Vanness would have mentioned dropping a charge that Respondent had not yet received and is not shown to have had knowledge of prior to receipt. This is true regardless of whether the conversation took place on May 7, as Vanness testified and I find, or May 8. It is clear from Brady's testimony that it took place prior to election day, May 9.

Brady credibly testified that Woodruff told him on the morning after his conversation with Vanness, therefore the morning of May 8 or 9, that the election outcome would probably depend on the votes of Brady and Mark Tucker. I do not credit Woodruff's denial. Brady's testimony on this point had the ring of truth and was more convincing than Woodruff's denial.

B. *Conclusions*

I find and conclude that the General Counsel has not shown by a preponderance of the evidence that McCully was unlawfully discharged, or even that his union activities were a motivating factor in that discharge. Respondent had no knowledge of McCully's union activity or any union activity at the time of his discharge, could not therefore have discharged him for that activity, and had solid cause to discharge him for his insubordinate outburst at Woodruff.

Woodruff's request to Robinson that he remove the Teamsters cap and Woodruff's action in grabbing the cap

[15] Subsequent to this meeting, Vallenga was shown these records by Vanness.

[16] At a later date Vanness told Vallenga the visit with Schwan was not permissible.

[17] Neither Brady nor Wichman testified about the conversation. I draw no adverse inferences from this.

from Robinson's head constitute discouragement of wearing union insignia and are violations of Section 8(a)(1) of the Act. That Robinson continued to wear the cap, and that the cap is not part of the company uniform does not alter this conclusion.[18] Woodruff's accompanying question, "What are you trying to do, get yourself fired?" is a clear threat of discharge for continuing to wear the Teamster cap. As such, it is also a violation of Section 8(a)(1) of the Act.

The General Counsel does not explain his theory as to how Woodruff's comment to Brady, in regard to the determinative nature of his vote and that of Tucker, translates into the unlawful creation of an impression of surveillance. I conclude, however, that Woodruff's comment was sufficient to create an impression that he had ascertained the "swing" votes by investigation or surveillance and was reasonably calculated to impress upon Brady that his union activities and sympathies had been the subject of employer survey. I therefore find, although the matter is not entirely free from doubt, that Respondent did on this occasion by Woodruff's comment create an impression of Respondent surveillance of employees' union activities, and thereby violated Section 8(a)(1) of the Act. I also find that Woodruff's statement to Brady amounted to subtle interrogation by way of comment designed to elicit a reply from Brady as to how he would vote and was violative of Section 8(a)(1) for this additional reason.[19]

I conclude and find that the General Counsel has not shown by a preponderance of the credible evidence that Respondent has committed any other unfair labor practices alleged in the complaint.

IV. THE OBJECTIONS

The objections to election before me for hearing read as follows:

> 2. Supervisor, Mr. Woodruff, pulled a hat bearing the Teamster emblem from an employee's head, stating "either remove it or be suspended."
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> * * * * *
>
> 4. Supervisors, Mr. Woodruff and Mr. Veness took employees aside alone and made promises such as "we will offer certain employees their jobs back with full compensation if they will drop all charges against us."

The matters alleged in Objection 2 have been found to be unfair labor practices. Accordingly, I recommend Objection 2 be sustained.[20]

Objection 4 is not supported by credible evidence and should be overruled.

In view of the small size of the bargaining unit, the closeness of the election,[21] and the presence of two other employees when Woodruff grabbed Robinson's cap and issued a threat, I conclude that the matters encompassed by Objection 2 are sufficient in themselves to warrant setting the election aside.

Additionally, I find that even though the conduct of Woodruff in unlawfully creating an impression of surveillance and interrogating Brady is not alleged as objectionable conduct in the objections set for hearing before me it was alleged and litigated as an unfair labor practice and is serious conduct within the critical preelection which, objectively viewed, had a tendency to interfere with Brady's free and unfettered exercise of his franchise in the election. Accordingly, I further find that Woodruff's conduct interfered with the conduct of the election and is a further reason to set it aside.[22]

CONCLUSIONS OF LAW

1. Respondent, Schwan's Sales Enterprises, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discouraging the wearing of union insignia by its employees, Respondent violated Section 8(a)(1) of the Act.
4. By threatening an employee with discharge because he wore union insignia, Respondent has violated Section 8(a)(1) of the Act.
5. By creating the impression of surveillance of employee union activities, Respondent violated Section 8(a)(1) of the Act.
6. By interrogating an employee in order to ascertain how he would vote in the upcoming election, Respondent violated Section 8(a)(1) of the Act.
7. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
8. It has not been shown by a preponderance of the credible evidence that the discharge of Gregory McCully was violative of the Act, and except as found above Respondent has not engaged in the other unfair labor practices alleged in the complaint.

Pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[23]

The Respondent, Schwan's Sales Enterprises, Inc., Three Rivers, Michigan, its agents, officers, successors, and assigns, shall:

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[18] *Dixie Machine Rebuilders, Inc.*, 248 NLRB 881 (1980); *Regal Tube Company*, 245 NLRB 968 (1979).

[19] Woodruff's statement was not alleged as unlawful interrogation, but it was litigated and Respondent was on notice it was advanced by the General Counsel as an unfair labor practice within the meaning of Sec. 8(a)(1). Accordingly, my finding of unlawful interrogation is warranted by the pleadings and does not operate to deprive Respondent of due process.

[20] *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782, 1786-87 (1962).

[21] The final tally of ballots, as recited in the Board's Order issued in Case 7-RC-15866 on August 5, 1980, shows 3 for the Union, 5 against, and 2 challenged ballots.

[22] *Dawson Metal Products, Inc.*, 183 NLRB 191, 200-201 (1970).

[23] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein, shall, as provided

Continued

1. Cease and desist from:

(a) Discouraging the wearing of union insignia by its employees.

(b) Threatening employees with discharge for wearing union insignia.

(c) Creating the impression of surveillance of employee union activities.

(d) Interrogating employees with respect to how they will vote in a Board-conducted election.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its facility at Three Rivers, Michigan, copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that those portions of the consolidated complaint found to be without merit are hereby dismissed.

IT IS FURTHER ORDERED that the election held on May 9, 1980, in Case 7-RC-15866 be, and it hereby is, set aside, and said case is hereby remanded to the Regional Director for Region 7 to conduct a new election.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discourage our employees from wearing union insigna.

WE WILL NOT threaten our employees with discharge because they wear union insigna.

WE WILL NOT create the impression that we are surveying the union activities of our employees.

WE WILL NOT question our employees with respect to how they will vote in an election conducted by the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed to them under Section 7 of the Act.

SCHWAN'S SALES ENTERPRISES, INC.

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in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[24] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."